IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1781 OF 2004

IN

SUIT NO.1719 OF 2004

Mrs.Nirmal Kaur Nidharak .... Plaintiff.

vs.

1. Shri.Hardaman Singh Katra & others. ... Defendants.

Mr.Snehal Shah i/b. Thakore Jariwalal & Associates, for Plaintiff.

Mr.S.K.Sthalekar, for Defendant nos.1 & 2.

Mr.S.I.Menon, for Defendant no.3.

CORAM: D.K.DESHMUKH,J.

DATED: 28th April,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiff. The plaintiff is a daughter of the deceased Sardar Surjit Singh Katra and his wife Smt.Sardarni Balwinder Kaur Katra. The suit has been filed for partition of the Estate left behind by the deceased Sardar Surjit Singh Katra and Sardarni

Balwinder Kaur Katra. The defendant nos. 1 to 4 are the sons of the deceased and defendant no.5 is daughter. The properties left behind by the deceased is described at Exhibit A to the plaint. The properties from item nos.1 to 7 are immovable properties and property at Sr.no.8 is movable property. So far as the properties and Sr.nos.1 and 2 are concerned there is no dispute that the deceased persons were joint lessees of the properties as partners of a firm. However, defendant no.3 is disputing the ownership of the deceased persons of the properties at Sr.nos.3 to 7. In any case, the properties at Sr.nos.3 to 7 are the premises which do not really belong to the parties but where the Corporation has granted permission to the defendants to carry on business. But so far as the properties at Sr.no.1 are concerned, there appears to be no dispute that the plaintiff will have share in those properties. The learned Counsel for defendants state that the defendants are not carrying on any business presently on these properties. Considering that, in my opinion, the following order would meet the ends of justice:-

(i) Notice of Motion is granted in terms of prayer clause (a) excluding bracketed portion. So far as the properties at item no.1 in Exhibit A is concerned, the Receiver shall, after taking possession of the properties, offer agency to the defendants on usual terms and conditions including royalty but no security. But if the defendants are not in a position to be agents of the receiver, then the receiver shall call bids from the outsiders to be appointed as agent of the receiver to be in possession of the properties.

(ii) So far as properties at Sr.no.2 in Exhibit A is concerned, that property appear to be tenanted. Therefore, receiver will collect rent from the tenants. So far as flats which are in possession of the defendants are concerned, the receiver shall take symbolic possession and shall appoint defendants who would be found in possession of those flats as his agents to be in possession on usual terms and conditions except security and royalty.

(iii) In so far as other properties are concerned i.e. properties at Sr.nos.3 to 8 in Exhibit A, interim injunction in terms of prayer clause (b) is granted, excluding bracketed portion.

Notice of Motion disposed of.